IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1971 OF 2001

Ramchandra Laxman Shinde. ... Applicant.

Versus.

Rudrappa Pandurang Punekar & ors. ... Respondents.

Shri G.N.Salunke for the Applicant.

Shri U.V.Nikkam, A.P.P.for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 17th August, 2006.

P.C.:

1. This is an application filed by the Complainant in a private complaint seeking leave to prefer an appeal against an order of acquittal.

2. The private complaint was filed by the Applicant against the Respondents Nos.1 to 4 herein alleging commission of offence punishable under section 465 read with section 34 of the Indian Penal Code and in the alternative for the offence punishable under section 420 read with section 34 of the Indian Penal Code. The Respondent No.1 was the owner of the house property situated at Vita. According to the case of the Applicant, the 1st Respondent agreed to sell the house property to the Applicant for consideration of Rs.2,60,000/- and he paid Rs.1,05,000/- to the 1st

Respondent as an earnest money. According to the case of the Applicant the 1st Respondent executed agreement for sale in favour of the Applicant and an assurance was given by the 1st Respondent to the Applicant that he will clear encumbrances created in favour of Vita Merchants Bank. The 1st Respondent avoided to execute the sale deed in favour of the Applicant and therefore, the Applicant issued a registered notice dated 3rd January 1984 through his Advocate and called upon the 1st Respondent to execute conveyance. The case of the Applicant is that after notice was issued by the Advocate for the Applicant on 5th January 1984 the 1st Respondent purportedly executed a sale deed in respect of the property in question in favour of the 4th accused Shankar Nagesh Divate. The said sale deed was registered with the office of the Sub-Registrar on 10th January 1984. According to the case of the Applicant the said sale deed was executed on the basis of the ante-dated agreement dated 3rd January 1984 allegedly executed in favour of the said Shankar Divate.

3. The learned trial Judge held that the Applicant has failed to prove that in between 20th November 1983 to 5th March 1984 both the accused persons in furtherance of their common intention created a forged and fabricated document in favour of the said Shankar Divate in order to defraud the Applicant. The learned

trial Judge also held that the Applicant failed to prove that on 20th November 1983 the accused persons in furtherance of their common intention dishonestly induced the Applicant to hand over a sum of Rs.1,05,000/- as earnest money in token of execution of an agreement for sale by making false representation.

4. The learned Advocate for the Applicant submitted that the trial Court was unnecessarily impressed by the fact that the original documents produced by the Applicant were withdrawn by him and the original documents were not produced thereafter. He submitted that the forgery alleged was in respect of an agreement which was in the custody of the accused. He submitted that the evidence on record shows that with a view to pressurise the said Shankar Divate the agreement for sale was executed in favour of the Applicant.

5. I have considered the submissions. The Applicant produced the original documents on which he was relying upon along with the list at Exh.71. By making an application at Exh.71 he took back the documents. Later on an application was made at Exh.77 by the Applicant for issuing witness summons for production of the said original documents which were allegedly produced by the Applicant in Special Civil Suit No.100 of 1986 filed by him for specific

performance of the agreement dated 20th November 1983. The said application was allowed. However, the Applicant himself applied vide Exh.78 contending that the original documents have not been filed in the said suit filed by him and he will file the same in the complaint after tracing out the said documents. Till completion of trial, the Applicant did not produce the said documents though on an application made by the Accused persons, the trial Court directed the Applicant to produce the original documents. It was the case of the Applicant himself that on 20th November 1983 agreement for sale was executed by dishonestly inducing the Complainant to hand over a sum of Rs.1,05,000/-. It is in this context that the learned trial Judge has found fault with the Applicant. The Applicant came out with a case that he had produced the documents in the civil suit which was found to be incorrect on his own showing. The Applicant being the Complainant, the burden of proving the guilt of the accused persons was on the Applicant. Viewed with this perspective, the learned trial Judge was right in holding that the Applicant has withheld the best evidence from the Court.

6. The learned Counsel for the Applicant relied upon the observations made by the learned trial Judge that it is the contention of the 1st Respondent that with a view to pressurise the said Shankar Divate the

agreement for sale was executed in favour of the Applicant. After making this observation, the learned trial Judge has recorded a finding that there is some variance in the deposition recorded in English and in Marathi and the Marathi version appears to be consistent. The learned Judge also noted the fact that the suit for specific performance filed by the Applicant failed. The view taken by the learned trial Judge is a possible view which can be taken on the basis of the evidence on record. Merely because other view can be taken is not a ground to entertain the Appeal against acquittal. No case is made out for grant of leave. The Application is rejected.

Judge.